

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

CENTER FOR BIOLOGICAL DIVERSITY and
HEALTHY GULF,

Plaintiffs,

v.

DAVID BERHNARDT, in his official capacity as
Secretary of the U.S. Department of the Interior, and
U.S. FISH AND WILDLIFE SERVICE,

Defendants.

Case No: 2:20-cv-00943-WBV-KWR
SECTION D(4)

Judge Wendy B. Vitter
Magistrate Judge Karen Wells Roby

This Stipulated Settlement Agreement (“Agreement”) is entered into by and between Plaintiffs Center for Biological Diversity and Healthy Gulf and Defendants David Bernhardt, in his official capacity as Secretary of the United States Department of the Interior, and the United States Fish and Wildlife Service (collectively, “the parties”). In support of this Agreement, the parties state as follows:

WHEREAS, Plaintiffs filed a complaint for declaratory and injunctive relief on March 19, 2020, alleging that Defendants had violated the Endangered Species Act (“ESA”) by failing to complete a final listing determination for the eastern black rail (*Laterallus jamaicensis jamaicensis*) within the timeframe outlined in 16 U.S.C. § 1533(b)(6)(A);

WHEREAS, the United States Fish and Wildlife Service submitted a final rule listing the eastern black rail as a threatened species under the ESA to the Office of Federal Register for publication on September 1, 2020, and the final rule was published in the *Federal Register* on October 8, 2020 (85 Fed. Reg. 63,764);

WHEREAS, the parties, without any admission or final adjudication of the issues of fact or law with respect to Plaintiffs' claim for attorneys' fees, costs, and other expenses, have reached a settlement that they consider to be just, fair, adequate, and equitable;

THEREFORE, the parties hereby stipulate and agree as follows:

1. Defendants agree to settle Plaintiffs' entire claim for attorneys' fees, expenses, and costs of litigation in the above-captioned matter for a total of \$5,000 pursuant to the ESA, 16 U.S.C. § 1540(g)(4).

2. Plaintiffs agree to accept payment of \$5,000 in full satisfaction of any and all claims for attorneys' fees, expenses, and costs of litigation incurred in the above-captioned matter, through and including the date of this Agreement.

3. Plaintiffs agree that receipt of this payment of \$5,000 shall operate as a release of any and all claims for attorneys' fees, expenses, and costs of litigation that they possess against the United States, including each named Defendant, incurred in the above-captioned matter, through and including the date of this Agreement.

4. Defendants' payment, as identified in Paragraph 1 above, shall be accomplished via electronic payment. Within ten (10) business days after the entry of a Court order approving this Agreement, Plaintiffs agree to provide Defendants' counsel with the following information necessary for Defendants to process the electronic transfer: (i) the payee's address; (ii) the payee's telephone number; (iii) the payee's bank account number; (iv) account type; (v) bank routing; (vi) transit number; and (vii) the payee's tax identification number.

5. Defendants agree to submit all necessary paperwork for the processing of the payment to the Department of the Treasury's Judgment Fund Office within fifteen (15) business

days of the Court order approving this Agreement or Plaintiffs providing the necessary information outlined in Paragraph 4, whichever is later.

6. Plaintiffs shall send written confirmation of the receipt of payment to Defendants' counsel within seven (7) days of receiving the payment.

7. Plaintiffs and Plaintiffs' counsel agree to hold Defendants harmless in any litigation, further suit, or claim arising from the authorized transfer of the agreed-upon settlement amount.

8. Nothing in this Agreement shall be interpreted as, or shall constitute, a requirement that Defendants are obligated to pay any funds exceeding those available or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other law or regulation.

9. By this Agreement, Defendants do not waive any right to contest fees claimed by Plaintiffs or Plaintiffs' counsel, including hourly rates, in any future litigation or continuation of the above-captioned matter. Further, this Agreement, including the provisions relating to attorneys' fees and costs, has no precedential value in any other context and shall not be cited in any other litigation except as necessary to enforce the terms of this Agreement.

10. The parties agree that this Agreement was negotiated in good faith and that it constitutes a settlement of claims that were denied and disputed by the parties. The Agreement represents the entirety of the parties' commitments with regard to the settlement of attorneys' fees, expenses, and costs of litigation in the above-captioned matter, and is intended to be the final and sole agreement between the parties. The parties agree that any prior or contemporaneous representations or understandings not explicitly contained in this written Agreement, whether written or oral, are of no further legal or equitable force or effect.

11. The terms of this Agreement shall become effective upon entry of an order by the Court approving the Agreement.

12. Upon approval of this Agreement by the Court, Plaintiffs' complaint shall be dismissed with prejudice.

13. The undersigned representatives of each party certify that they are fully authorized by the party they represent to agree to the Court's entry of the terms and conditions of this Agreement and that they agree to the terms herein.

Dated: January 14, 2021

Respectfully submitted,

JEAN E. WILLIAMS, Deputy Assistant Attorney General
SETH M. BARSKY, Chief
MEREDITH L. FLAX, Assistant Chief

/s/ Kaitlyn Poirier
Kaitlyn Poirier, Trial Attorney
Wildlife & Marine Resources Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
Tel: 202-307-6623
kaitlyn.poirier@usdoj.gov

Attorneys for Defendants

/s/ Stephanie Kurose
Stephanie Kurose (CT Bar No. 437804)*
Center for Biological Diversity
1411 K St. NW, Suite 1300
(202) 849-8395
skurose@biologicaldiversity.org

/s/ Ryan Adair Shannon
Ryan Adair Shannon (OR Bar No. 155537)*

Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211-0374
(503) 283-5474 ext. 407
rshannon@biologicaldiversity.org

Attorney for Plaintiffs
*Admitted *pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2021, a true and correct copy of the above document was electronically filed with the Clerk of Court using CM/ECF. Copies of the document will be served upon interested counsel via the Notices of Electronic Filing that are generated by CM/ECF.

/s/ Kaitlyn Poirier

Kaitlyn Poirier, Trial Attorney
Wildlife & Marine Resources Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
Tel: 202-307-6623
kaitlyn.poirier@usdoj.gov

Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

CENTER FOR BIOLOGICAL DIVERSITY and
HEALTHY GULF,

Plaintiffs,

v.

DAVID BERHNARDT, in his official capacity as
Secretary of the U.S. Department of the Interior, and
U.S. FISH AND WILDLIFE SERVICE,

Defendants.

Case No: 2:20-cv-00943-WBV-KWR
SECTION D(4)

Judge Wendy B. Vitter
Magistrate Judge Karen Wells Roby

[PROPOSED] ORDER ADOPTING STIPULATED SETTLEMENT AGREEMENT

Upon consideration of Plaintiffs and Defendants' Stipulated Settlement Agreement (ECF 25) and finding good cause shown, it is hereby ORDERED that the terms and conditions of the Agreement are adopted as an enforceable order of this Court. Plaintiffs' complaint is dismissed with prejudice.

IT IS SO ORDERED.

Dated this _____ day of _____, 2021.

HON. WENDY B. VITTER
United States District Judge